

Message

From: Neugeboren, Steven [Neugeboren.Steven@epa.gov]
Sent: 1/23/2021 8:05:17 PM
To: OGC WLO [OGC_WLO@epa.gov]
Subject: FW: an ethics welcome to Melissa Hoffer and Dimple Chaudhary
Attachments: impartiality determination 1-19-21 redacted.pdf; enclosure to impartiality determination 1-19-21 updated 1-21-21.docx

FYI. I know folks will have questions about what this means (it gets a little confusing but I spent some time with Justina yesterday to try to understand better and in particular how it will work with WOTUS and 401, where Mass. and NRDC are parties to some rule challenges and not others). I'm working with her on nailing that down for WOTUS first and will share my communication with her with the WOTUS attorneys.

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From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, January 21, 2021 9:12 PM
To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi there,

As you might expect, the OGC/Ethics Office is cheerfully up to our eyeballs in ethics issues for our incoming appointees. Not only are we thinking, as we always do, about financial conflicts of interest, but we are also weighing impartiality concerns with former employers and former clients, bar obligations and now an executive order on ethics commitments. We will be drafting recusal statements, but we typically wait until after we have a chance to review the financial disclosure reports. As many of you also file that wretched report, you know how much work that entails. So, before we can distribute signed recusal statements, here's how to navigate the likely recusal issues for Melissa Hoffer and Dimple Chaudhary.

MELISSA HOFFER

- Melissa is bound by her bar restrictions from sharing the confidences of her former client, the Commonwealth of Massachusetts, and from switching sides in litigation in which she previously participated or for which she provided supervision. With the attached impartiality determination, however, I authorized her to participate in making *policy* decisions about that litigation, such as whether or not to stay the proceedings. That impartiality determination included the list of cases from which she is recused because of her bar obligations. For her tenure at EPA, she will be recused from participation in these cases.
- For now and continuing for one year, she is recused from participation in any new specific party matter in which Massachusetts is a party or represents a party. Should we issue another impartiality determination, I will share that with you.

DIMPLE CHAUDHARY

- Dimple is bound by her bar restrictions from sharing the confidences of her former client, the Natural Resources Defense Council, and from switching sides in litigation in which she previously participated or for which she provided supervision or counsel. The cases from which she is recused are:

CASE NAME and/or SUBJECT MATTER	CITATION and/or DESCRIPTION:
Consent Decree Implementation of Agency's failure to issue a worst-case spill regulation for non-transportation-related-substantial-harm facilities	<i>Environmental Justice Health Alliance for Chemical Policy Reform, NRDC, et al. v. EPA</i> , Case No. 19-cv-2516, SDNY
Challenge to Methylene chloride rule	<i>Labor Council for Latin America, NRDC, et al. v. EPA</i> , Case No. 19-1042, 2d Cir.
Challenge to use of tetrachlorvinphos on pets	<i>NRDC v. Wheeler</i> , Case No. 20-72794, 9th Cir.
Provided individual counseling to plaintiffs in Flint water crisis	<i>Walters v. Flint, EPA, et al.</i> , Case No. 17-10164, E.D. Mich.

- Because Dimple's former employer is not a state or local government, she is further bound by Section 2 of the Biden Ethics Pledge. We cannot grant impartiality determinations for her. Instead, for two years, she cannot participate in any specific party matter in which NRDC is a party or represents a party. She may not attend any meeting nor have any communication with NRDC unless the communication relates to a particular matter of general applicability and participation in the event is open to all interested parties. Dimple's recusal period with NRDC on any specific party matter (e.g., litigation, contracts, grants, speaking engagement) will last until after January 20, 2023.

If you have any questions about these general recusal areas, then please let me know.

Justina

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